

Honorable _____

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

WASHINGTON STATE MILITARY
DEPARTMENT,

Plaintiff,

v.

JOHN WORTHINGTON,

Defendant.

NO.

COMPLAINT

Plaintiff, Washington Military Department, brings this Complaint against John Worthington, and avers as follows:

I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction over this matter on the basis of federal question jurisdiction under 28 U.S.C. § 1331 and the Supremacy Clause of the United States Constitution.

1.2 Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that Defendant resides in this judicial district and a substantial part of the events that gave rise to this claim occurred in this judicial district.

II. PARTIES

2.1 Plaintiff, Washington Military Department is an agency of the State of Washington and conducts business in this judicial district. The executive head of the Washington Military Department is the Adjutant General. Subject to the orders of the Governor, who is the commander-in-chief of the militia of Washington, the Adjutant General commands the Washington National Guard (WNG) when the Guard is not in federal service. The WNG is the organized militia of the State of Washington.

2.2 Defendant, John Worthington, is a resident of Renton, King County, Washington.

III. FACTS

3.1 From December 4, 2007 to May 31, 2008, Defendant John Worthington submitted a number of requests under the Washington State Public Records Act (PRA), RCW 42.56, to the Washington Military Department, for records relating to the counter-drug activities of the WNG acting under 32 U.S.C. § 112.

3.2 The Washington Military Department was advised by a federal Judge Advocate, assigned to advise the WNG on federal legal matters and other federal officials that the records requested were federal records because the WNG obtained or created these records while acting under 32 U.S.C. § 112. The Judge Advocate also advised the Military Department that these federal records may be obtained only through a Freedom of Information Act (FOIA) (5 U.S.C. § 552) request to an appropriate federal official.

3.3 In reliance upon this advice, the Washington Military Department responded to Defendant that it did not have any responsive state records and that the WNG may have

1 responsive federal records that may be requested from the Judge Advocate pursuant to the
2 FOIA.

3 3.4 The Defendant brought an action under the PRA against the Washington
4 Military Department in state court on or about June 9, 2008, to compel disclosure and to
5 obtain penalties under the PRA. The state court action remains pending and has been
6 continued pending the outcome of the federal legal issues in federal court.
7

8 **IV. CAUSE OF ACTION AND DECLARATORY JUDGMENT**

9 4.1 Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201, for the
10 purpose of determining a federal legal question in actual controversy between the parties.

11 4.2 Based upon, but not limited to, all of the above allegations and the law, the
12 Plaintiff is entitled to a final judgment declaring the following:
13

14 1. When the Washington National Guard (WNG) is acting under 32
15 U.S.C. § 112, the Freedom of Information Act (5 U.S.C. § 552 (FOIA)) applies
16 to the WNG.

17 2. Under the Supremacy Clause of the United States Constitution, the
18 FOIA preempts the application of the Washington State Public Records Act,
19 RCW 42.56 (PRA), to records the WNG obtains, possesses, or creates when it
20 acts under 32 U.S.C. § 112.

21 3. The Washington Military Department did not act arbitrarily or
22 capriciously when it refused to produce the records John Worthington
23 requested under the PRA because the disclosure of those records is governed
24 by federal law, but informed Mr. Worthington that such records may be
25 requested under the FOIA.
26

V. REQUEST FOR RELIEF

Plaintiff, Washington Military Department respectfully requests that this Court grant the following relief:

1. Grant the declaratory judgment as set forth in 4.2.
2. Award the Plaintiff its attorneys' fees and costs as permitted by law; and
3. Grant such other relief as the Court deems just and equitable.

DATED this 18th day of February, 2011.

ROBERT M. MCKENNA
Attorney General

/s/ Brian Faller
BRIAN FALLER, WSBA No. 18508
Assistant Attorney General

Attorneys for Plaintiff
Washington Military Department

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2011, I electronically filed the foregoing with the clerk of the court using the CM/EFC system, which will send notification of such filing to the following CM/EFC participants:

William John Crittenden – wjcrittenden@comcast.net

DATED this 18th day of February, 2011.

/s/ Heidi Martinez

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